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In The

Supreme Court of the United States

OCTOBER TERM, 1968

NO. 665

LOUISE TUCKER BENNETT, JAMES ROBERTSON, JULIAN MAY JACKSON, suing by his mother and next friend Corine Jones and SAMUEL R. PERRYMAN, each individually and on behalf of all others similarly situated,

APPELLANTS

versus

D. S. COTTINGHAM, GEORGE E. DAILEY, GLENN TIBBS, LOUIE BOGGS, LLOYD ROWE, ALICE PRATT, CLIFFORD WARD, FREEMAN MURPHY, Justices of the Peace in Bibb County, Alabama; HAROLD DAILEY, Sheriff of Bibb County, Alabama; MacDONALD GALLION, Attorney General of the State of Alabama and GEORGE WHITE, County Solicitor of Bibb County, Alabama,

APPELLEES

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

MOTION TO DISMISS OR AFFIRM

MacDONALD GALLION
Attorney General
State of Alabama

Administrative Building
Montgomery, Alabama 36104

ROBERT P. BRADLEY
Assistant Attorney General
State of Alabama

Administrative Building
Montgomery, Alabama 36104

Attorneys For Appellees

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The appellee moves this Court to dismiss the appeal herein, or, in the alternative, to affirm the judgment of the U. S. District Court for the Northern District of Alabama on the following grounds:

1. The appeal does not present a substantial Federal question.

2. The question asked of the Court by the appeal is so unsubstantial as not to need further argument.

STATEMENT

The question presented to this Court by the appellant is somewhat misleading in that the "state practice" referred to one county sheriff out of 67 in the State of Alabama, and there was no evidence in this case that the remaining sixty-six sheriffs were on a fee basis or a salary basis; and, as the record will show, there was no minimum number of traffic cases required of the deputies by the sheriff (R. 142-143).

The sheriff and his deputies testified that it has been made clear that the deputies were not to make an arrest for the traffic offense of speeding unless the motorist was going 65 miles per hour at night and 75 miles per hour in the daytime — this is 15 miles per hour over the legal limits (R. 70, 134-135). The deputies further testified that they had specific instructions from the sheriff to enforce the law impartially and to arrest only those who were violating the law (R. 70, 134-135). There was no testimony in the record that supports the statement that the sheriff of Bibb County, Alabama had required his deputies to make a minimum number of arrests.

The procedure followed by the sheriff and his deputies in arresting persons deemed to be violating the traffic laws of Alabama was to stop the motorist, ask for his driver license, inform him of the infraction, give him a copy of the citation, permit him to sign his own recognizance, fix a date for trial and permit the motorist to be on his way. However, if the motorist wished an immediate hearing before a magistrate, the officer would forthwith take the offender to the magistrate for a hearing (R. 124-125). The testimony showed there were very few trials, with most of the offenders pleading guilty (R. 71-72).

The evidence does show that the bulk of the traffic cases made by the Bibb County, Alabama Sheriff's Office

were placed in the various Justices of the Peace Courts in the county (Plaintiff's Exhibits 18, 20, 22). But it also shows that after the temporary injunction was issued by the District Court to the Justices of the Peace in Bibb County, the cases were then placed in the Circuit Court of Bibb County, Alabama — the Court of general jurisdiction in the State of Alabama[1] (R. 63-64). And, in view of the fact that a permanent injunction has been issued against the Bibb County Justices of the Peace, all of the traffic cases made in Bibb County, Alabama, by whatever law enforcement agency, will go to the Circuit Court of Bibb County, Alabama in the future (App. 10a).

ARGUMENT

The Decision of the U. S. District Court for the Northern District of Alabama was correct and therefore no substantial Federal question is presented by this appeal.

The record in this case clearly shows that the sheriff of Bibb County, Alabama was on a "fee" basis so far as income for the operation of his office was concerned (R. 50). That is, he did not receive a salary, but received fees for the various duties he was required by law to perform.

But there was no evidence to show that the sheriff and his deputies were doing anything other than enforcing the

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[1]Title 13, Section 126(1), (2), (3), Code of Alabama 1940, as Recompiled 1958:

"The circuit court has authority:

"1. To exercise original jurisdiction of all felonies and misdemeanors; of all actions for libel, slander, assault and battery and of ejectments without regard to the amount involved; and of all other suits and actions at law when the matter or sum in controversy exceeds fifty dollars; and in all causes in equity.

"2. To exercise appellate jurisdiction of all civil actions and criminal cases cognizable before a county court or court of like jurisdiction, or a justice of the peace, or court created in lieu thereof, and in such other cases as may be provided by law.

"3. To exercise a general superintendence over all inferior jurisdictions."

laws — mainly traffic laws — of the State of Alabama, and the District Court pointed out that there was no conspiracy between the sheriff and the Justices of the Peace alleged or proved (App. 7a and 8a).

In fact, the evidence shows that the sheriff issued specific orders to his deputies not only to enforce the law but to do so in an impartial manner (R. 134-135).

There was never any question that the sheriff and his deputies were operating on the quota system in making arrests until this appeal.

Granted, the sheriff would not have any income if he and his deputies did not make arrests, but as the District Court said, to receive fees for the arrest is not a violation of due process, but merely an incentive to the officers to be diligent in enforcing the laws of the State (App. 8a).

Furthermore, the District Court hinted that *Tumey vs. Ohio*, 273 U. S. 510, 47 S. Ct. 437, 71 L. Ed. 749, favored police officers being given incentives to enforce the law. However this may be, *Tumey* certainly did not, in any way, indicate that police officers were in the same category as Judges so far as receiving fees for carrying out their duties. The District Court also said that the facts in the case on appeal certainly did not warrant it in extending *Tumey* to a sheriff and his deputies (App. 8a).

The two cases cited by appellant, *Hill vs. United States*, 328 F. 2d 988 (5th Cir. 1964) and *Williamson vs. United States*, 311 F. 2d 441 (5th Cir. 1963), to suggest that maybe the U. S. Supreme Court in *Tumey* had gone too far in saying that the states could and probably should reward law enforcement officers for their diligence in arresting law violators, were concerned with the problem of entrapment of innocent persons. The record is clear in this case that the offenses were committed in the presence of the arresting officer, and the question of entrapment was never raised (R.

124). In fact, the undisputed evidence shows that most of those arrested pleaded guilty to the charge made against them (R. 71, 72).

Tumey clearly authorized a State, through its Legislature, to dispose of fines in criminal cases as it saw fit, and I would suggest to this Court that costs imposed by the trial court pursuant to statute should be similarly treated.

And *Tumey* also authorized a State to offer rewards to law enforcement officers for their strict enforcement of the law. The rewards in the case at bar were given by the sheriff to his deputies as an incentive to be diligent in their enforcement of the traffic laws of the State of Alabama in Bibb County.

Furthermore, no case has been cited to this Court by the appellants contrary to the holding in *Tumey* and the judgment of the District Court now the subject of this appeal.

CONCLUSION

It is respectfully submitted that the judgment of the U. S. District Court for the Northern District of Alabama should be affirmed and the appeal therefrom dismissed.

Respectfully submitted,

MacDONALD GALLION
Attorney General
State of Alabama

ROBERT P. BRADLEY
Assistant Attorney General
State of Alabama

Administrative Building
Montgomery, Alabama 36104
Attorneys for Appellee

CERTIFICATE OF SERVICE

I, Robert P. Bradley, one of the attorneys for appellee, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 13 day of November, 1968, I served a copy of the foregoing motion to dismiss or affirm, upon Honorable Harvey M. Burg, one of the attorneys for appellant, 1630 Fourth Avenue North, Birmingham, Alabama 35203, by depositing the same in the United States mail, first class postage prepaid, and properly addressed to him at the address given.

ROBERT P. BRADLEY
Assistant Attorney General
State of Alabama

Administrative Building
Montgomery, Alabama 36104